TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 837

CHAS. C. STEWARD MACHINE COMPANY,
PETITIONER,

vs.

HARWELL G. DAVIS, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 26, 1937.

CERTIORARI GRANTED MARCH 29, 1937.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 1, 1937.

[fol. a] [Caption omitted]

[fols. 1-5]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DIVISION OF THE NORTHERN DISTRICT OF ALABAMA

At Law. No. 4722

CHAS. C. STEWARD MACHINE COMPANY, a Corporation, Plaintiff,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue for the District of Alabama, residing in and having an office in the City of Birmingham, County of Jefferson, State of Alabama, Defendant

BILL OF COMPLAINT—Filed March 10, 1937

Plaintiff avers that it is corporation organized under the laws of the State of Alabama with its principal place of business at Birmingham, Jefferson County, Alabama, and is now and at all times hereinafter mentioned has been engaged in the manufacture of coal mining machinery; the defendant Harwell G. Davis is the Collector of Internal Revenue for the collection district of Alabama charged by law with the duty of collecting taxes, fines and penalties imposed by the statutes hereinafter referred to, and that [fol. 6] he is a citizen of the State of Alabama and resides and has his office in the City of Birmingham, State of Alabama; that this is a suit for the recovery of an internal revenue tax illegally assessed and collected and is a suit at law of a civil nature.

Count One

Plaintiff claims of the defendant the sum of $46.14 for this:

That pursuant to the provisions of the Act of Congress, approved August 14, 1935, commonly known as the Social Security Act, entitled "An Act To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more ade-

quate provision for aged persons, blind, persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes," plaintiff on March 2, 1937, as an employer of eight or more employees during the year 1936, as defined in Title IX of such Act, paid to the defendant whose duty it was to collect the taxes, fines and penalties imposed by such Act, the sum of $46.14, being the tax imposed on plaintiff by Title IX of such Act for the period from January 1, 1936 to December 31, 1936; that the Act under which such tax was paid to the defendant is unconstitutional and invalid and that such tax was wrongfully and illegally assessed and collected by the defendant for the following reasons:

1. The plan and scheme set up by Congress in the Social Security Act has for its purpose and effect the enactment [fol. 7] of unemployment compensation laws by the States, which are not the voluntary acts of the governments of the States, but which are brought about by the coercion and compulsion of the Federal Act.

2. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Social Security Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the states to regulate. Under such plan and scheme the States surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the States.

3. Under the pretext of exercising its powers Congress, by the Social Security Act, undertakes to effectuate an end which is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the States or to the people thereof.

4. Under the system created by the Social Security Act and the State acts enacted under the coercion thereof, the property of claimant and other employers is taken for the

benefit of an arbitrarily defined class without the payment of just compensation to claimant and such other employers.

5. The taxes imposed under the Social Security Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes, but are imposed for the purpose of providing funds for disbursement in the administration of State laws relating to [fol. 8] matters beyond the control of Congress and which the Social Security Act coerces and compels the States and the people thereof to enact.

6. The Social Security Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social Security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of State unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any State can be determined except by the exercise of discretion legislative in character and extent.

Plaintiff on, to-wit, March 2, 1937 filed with the Commissioner of Internal Revenue a claim for a refund of the tax so paid according to the provisions of law in that regard and regulations of the Secretary of the Treasury established pursuance thereof, a copy of such claim being attached hereto marked Exhibit 1 and made a part hereof as if fully set out herein; that the Commissioner of Internal Revenue did on March 9, 1937, render a decision rejecting and denying said claim for refund in full, a copy of the letter notifying plaintiff of such rejection and denial being attached hereto as Exhibit 2 and made a part hereof, as if fully set out herein.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

Service of a copy of the foregoing complaint is hereby accepted and other or further service is hereby waived.

This March 10, 1937.

Jim C. Smith, Attorney for Defendant.

[fol. 9] EXHIBIT 1 TO BILL OF COMPLAINT

Claim

To be Filed with the Collector Where Assessment Was Made or Tax Paid

STATE OF ALABAMA,
County of Jefferson:

Name of taxpayer of
purchaser of stamps Chas. C. Steward Machine Co.
Business address: (Street) 1236 No. Apalachee St., (City) Birmingham, (State) Alabama.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed District of Alabama.
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1936, to Jan. 1, 1937.
3. Character of assessment or tax Employers Tax Title 9 Social Security Act.
4. Amount of assessment, $46.14; dates of payment March 2, 1937.
5. Date stamps were purchased from the Government ——, ——.
6. Amount to be refunded $46.14.
7. Amount to be abated (not applicable to income or estate taxes $—.
8. The time within which this claim may be legally filed expires, under Section 1112 of the Revenue Act of 1926, on March 2, 1941.

The deponent verily believes that this claim should be allowed for the following reasons:

The reasons for the allowance of this claim are set forth on the attached sheets identified as Exhibit A and made a part hereof.

(Signed) Chas. C. Steward Machine Co., by W. P. DeBardeleben, Sec. & Treas.

Sworn to and subscribed before me this 2 day of March, 1937. (Signature of officer administering oath:) L. J. Tyner, (Title) Notary Public. (Seal.)

[fol. 10] EXHIBIT "A" TO CLAIM FOR REFUND

The deponent verily believes that this claim should be allowed for the following reasons:

1. The Act of Congress approved August 14, 1935 and known as the Social Security Act and the tax collected from this claimant under Title IX of such Act are unconstitutional and void on each of the grounds stated below.

2. The plan and scheme set up by Congress in the Social Security Act has for its purpose and effect the enactment of unemployment compensation laws by the states which are not the voluntary acts of the governments of the states, but which are brought about by the coercion and compulsion of the Federal Act.

3. Such plan and scheme violate the 9th and 10th Amendments to the Constitution of the United States in that Congress, through the Social Security Act, undertakes to set up a Federal system of unemployment compensation in order to engage in the regulation of matters with which it is not concerned under the Constitution and which are wholly within the power and jurisdiction of the states to regulate. Under such plan and scheme the states surrender control of the monies collected from their citizens and attempt to surrender to the United States effectual control of the construction, operation and methods of administration of the laws of the states.

4. Under the pretext of exercising its powers Congress, by the Social Security Act, undertakes to effectuate an end which is inconsistent with the limited grants of power to Congress in order to bring about a system of unemployment compensation, which is a matter reserved to the states or to the people thereof.

[fol. 11] 5. Under the system created by the Social Security Act and the state acts enacted under the coercion thereof, the property of claimant and other employers is taken for the benefit of an arbitrarily defines class without the payment of just compensation to claimant and such other employers.

6. The taxes imposed under the Social Security Act are not taxes creating revenue for the support of the Government in the accomplishment of its constitutional purposes,

but are imposed for the purpose of providing funds for disbursement in the administration of state laws relating to matters beyond the control of Congress and which the Social Security Act coerces and compels the states and the people thereof to enact.

7. The Social Security Act violates Article I, Section 1, of the Constitution in that it attempts to vest in the Social security Board power to determine what sums shall be paid out of the Treasury of the United States for the administration of state unemployment compensation laws without fixing any legal standards whereby the amounts to be paid to any state can be determined except by the exercise of a discretion legislative in character and extent.

I, Walter Bouldin, attorney at law, a member of the firm of Martin, Turner & McWhorter, do hereby certify that I prepared the foregoing claim and Exhibit thereto; that the facts therein stated are not known to me of my own knowledge but the statements of fact therein are based upon information furnished by the taxpayer which I believe to be true.

This 2 day of March, 1937.

Walter Bouldin.

[fol. 12] EXHIBIT 2 TO BILL OF COMPLAINT

IT:SS:R&A.
SMA.

Mar. 9, 1937.

Charles C. Steward Machine Company, 1236 North Apalachee Street, Birmingham, Alabama.

SIRS:

Reference is made to your claim for refund of $46.14 which you paid to the Collector of Internal Revenue, Birmingham, Alabama, on March 2, 1937, as excise tax due for the calendar year 1936 on return, Form 940, filed with the collector on the same date under the provisions of Title IX of the Social Security Act.

It is alleged that the assessment and collection of the tax is illegal for the reason that the Act under which the assessment and collection is made is unconstitutional.

The tax was assessed and collected in accordance with existing law and, therefore, the Bureau of Internal Revenue is without authority to refund such tax unless and until it has been determined by the courts that the tax is unconstitutional. Your claim for refund is rejected in full.

Should further correspondence relative to this matter be necessary, please refer to the symbols IT:SS:R&A-SMA.

Respectfully, (Signed) Guy T. Helvering, Commissioner.

SMA:MH.
3-9-37.

[fol. 13]. In United States District Court

Demurrer—Filed March 10, 1937

Now comes the defendant and demurs to the complaint of the plaintiff and to each count thereof separately and severally and as grounds of said demurrer sets down and assigns separately and severally each of the following grounds, separately and severally:

1. The allegations of said count that the Act, known as Social Security Act, is unconstitutional and invalid, are mere conclusions of the pleader.

2. The facts alleged in said count are insufficient to constitute a cause of action against the defendant.

3. For that it affirmatively appears from the allegations of said count that the sum sought to be recovered is for taxes imposed as income taxes under the Constitution of the United States.

4. For that it is not alleged in said count, except by way of conclusion of the pleader, that the taxes therein mentioned and sought to be recovered, were illegally assessed and collected.

5. For that it is alleged in said count that the defendant Collector assessed the taxes therein claimed and it affirmatively appears that said taxes were assessed by the Commissioner of Internal Revenue, acting under the direction of the Secretary of the Treasury.

6. For that sufficient facts are not alleged therein to constitute a cause of action against the defendant.

[fol. 14] 7. For that the taxes sought to be recovered are excise taxes imposed by an Act of Congress and under the Social Security Act go as free funds, when collected, into the Treasury of the United States for the general welfare of the United States.

8. For that the facts averred are insufficient to make it appear that the taxes therein mentioned are not in truth taxes lawfully laid for the general welfare of the United States.

9. For that the alleged reasons, numbered one through six both inclusive, separately and severally set forth therein for the purpose of attempting to show that the Act under which the tax sought to be recovered is unconstitutional and invalid and that such tax was wrongfully and illegally assessed and collected by the defendant, are mere conclusions of the pleader and are not supported by the provisions of the Social Security Act.

10. There are not sufficient facts averred to make it appear that the defendant committed a trespass against the plaintiff in collecting from plaintiff the taxes sought to be recovered.

11. For that Title IX of the Social Security Act, under and by virtue of which plaintiff alleges the defendant assessed and collected the taxes sought to be recovered, was enacted by the Congress pursuant to powers granted to the Congress by the Constitution of the United States.

12. The facts averred are insufficient to show that the defendant in collecting from the plaintiff the taxes sought to be recovered committed any act which would legally constitute a trespass against plaintiff.

[fol. 15] 13. For that it is not sufficiently averred, except by way of conclusion of the pleader, that the defendant, in collecting the taxes sought to be recovered, or otherwise, committed any trespass against the plaintiff.

14. The facts averred are insufficient to show that the defendant in collecting the taxes sought to be recovered or in any other way in connection therewith, committed any trespass against or upon the plaintiff.

15. The plaintiff's complaint does not state any facts which would warrant a judgment by the Court against this defendant and in favor of the plaintiff.

16. It affirmatively appears from the allegations thereof that the alleged claim for a refund alleged to have been filed with the Commissioner of Internal Revenue and by him denied or rejected, was insufficient to warrant its allowance by the Commissioner and is wholly inadequate to sustain a cause of action in this Court for the refusal or rejection thereof by the Commissioner.

17. For that it is not averred in said count except by way of conclusion of the pleader that the defendant Collector, in committing the acts alleged therein, did so will fully and intentionally.

18. For that it affirmatively appears from the allegations of said count that the defendant Collector, in committing the acts therein alleged, did so in the performance of his duties under the provisions of the Social Security Act and that the defendant Collector acted under the direction of the Commissioner of Internal Revenue of the United States in collecting the money mentioned and claimed in said count.

Jim C. Smith, Counsel for Defendant.

[fol. 16] IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING DEMURRER AND DISMISSING CAUSE—Filed March 11, 1937

This cause coming on to be heard and being submitted to the court on this day upon demurrer heretofore filed by the defendant.

Thereupon, the court being fully advised in the premises is of the opinion that the demurrer of the defendant should be sustained and it is therefore by the Court:

Ordered, Adjudged and Decreed that the defendant's demurrer to the complaint be and the same is hereby sustained, to which action of the Court the plaintiff reserves an exception, which exception is duly allowed; and

Thereupon, the plaintiff declining to plead further, it is Ordered, Adjudged and Decreed by the Court that this cause be dismissed and that the defendant go hence without day and recover of and from the plaintiff his costs herein expended, for which execution may issue, to which action of the Court in sustaining the defendant's demurrer

and in dismissing this cause, separately and severally, the plaintiff duly excepts, separately and severally, which exceptions are separately and severally allowed.

This 11th day of March, 1937.

David J. Davis, United States District Judge.

[fol. 17] In United States District Court

Petition for Appeal—Filed March 11, 1937

Now comes Chas. C. Steward Machine Company, a corporation, plaintiff in the above styled cause, and conceiving and believing itself aggrieved by the judgment and decree of the court entered on, to-wit, March 11th, 1937, in the case in the United States District Court of the Northern District of Alabama, in which Chas. C. Steward Machine Company, a corporation, was plaintiff, and Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, was defendant, does pray for an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and it, the said Chas. C. Steward Machine Company, a corporation, prays that this appeal be allowed, that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said judgment and decree were rendered and entered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit for the purpose of having reviewed the ruling and decision in such judgment and decree contained and the errors therein corrected and such decree reversed according to law.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

[fol. 18] In United States District Court

Assignment of Errors—Filed March 11, 1937

Now comes Chas. C. Steward Machine Company, a corporation, plaintiff (appellant) in above styled cause, and respectfully submits the following assignments of errors upon which, separately and severally, plaintiff will rely upon the appeal from the judgment and decree made and

entered by this Court on March 11th, 1937, sustaining defendant's demurrer to the complaint and dismissing the cause:

1. The Court erred in sustaining defendant's demurrer to the complaint.

2. The Court erred in sustaining the defendant's demurrer to Count One of the complaint.

3. The Court erred in dismissing plaintiff's complaint.

4. The Court erred in holding the tax imposed by Title IX of the Social Security Act to be valid.

5. The Court erred in holding that Titles III and IX of the Social Security Act do not violate the 9th Amendment.

6. The Court erred in holding that Title III and IX of the Social Security Act do not violate the 10th Amendment.

7. The Court erred in holding that the Social Security Act is not invalid as a coercion upon the states to enact unemployment compensation laws.

[fol. 19] 8. The Court erred in holding that the Social Security Act is not invalid as a plan and scheme on the part of Congress to coerce the surrender by the states of the construction, operation and methods of administration of the laws of the states.

9. The Court erred in holding that the Social Security Act is not invalid as taking the property of claimant and other employers for the benefit of an arbitrarily defined class, contrary to the 5th Amendment.

10. The Court erred in holding that the taxes imposed by the Social Security Act are taxes for the accomplishment of constitutional purposes.

11. The Court erred in holding that the Social Security Act is not invalid as a delegation of legislative power to the Social Security Board.

Wherefore, for the errors assigned aforesaid, the plaintiff, Chas. C. Steward Machine Company, a corporation, prays that the judgment and decree of this court heretofore

rendered in this cause be in all things reversed and the cause remanded as may appear meet.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

[fol. 20] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed March 11, 1937

The petition of the plaintiff, Chas. C. Steward Machine Company, a corporation, praying an appeal from the judgment and decree entered in this cause on March 11th, 1937, sustaining defendant's demurrer to the complaint and dismissing the cause being now presented in open court during the term in which such judgment and decree were rendered, together with plaintiff's assignment of errors, it is hereby ordered that said papers be filed, and it is further ordered:

1. That the appeal be allowed to the United States Circuit Court of Appeals for the Fifth Circuit as prayed and that the transcript of such part of the record and proceedings as the parties may by præcipe duly designate, be transmitted duly authenticated to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans in the manner provided by law.

2. That plaintiff file security for costs, approved by this Court, for the sum of $500.00, or deposit such sum in cash with the clerk of this Court.

3. That a citation be issued admonishing the defendant to be in the United States Circuit Court of Appeals for the Fifth Circuit on or before thirty days from the date of this order.

Done, ordered and signed, this March 11th, 1937.

David J. Davis, United States District Judge.

[fols. 21-22] Bond on Appeal for $500.00, approved and filed March 11, 1937, omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

APPELLANT'S PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 11, 1937

To the Clerk of the District Court of the United States for the Southern Division of the Northern District of Alabama:

The plaintiff in the above styled cause is prosecuting an appeal to the United States Circuit Court of Appeals for the Fifth Circuit and will be designated in that court as the appellant. The plaintiff requests you to prepare a transcript of the record in the above styled cause for the United States Circuit Court of Appeals pursuant to an appeal allowed in said cause and that you also include in such transcript the following documents, pleadings and proceedings filed and to be filed in such cause, to-wit:

1. Complaint filed March 10, 1937.
2. Defendant's demurrer filed March 10, 1937.
3. Order of court sustaining demurrer and dismissing use made and entered on March 11, 1937.
4. Petition for appeal.
5. Assignment of errors.
6. Order allowing appeal made and entered March 11, 1937.
7. Appeal bond.
8. Citation of appeal.

[fol. 24] 9. Appellant's præcipe.

Dated this March 11th, 1937.

Borden Burr, Wm. Logan Martin, Walter Bouldin,
Attorneys for Plaintiff.

I, Walter Bouldin, hereby certify that on March 11th, 1937 I served a copy of the above and foregoing præcipe upon Honorable Jim C. Smith, Counsel for Appellee, in said cause.

Walter Bouldin.

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

[fol. 27] JOINT STIPULATION OF COUNSEL AS TO SUBMISSION OF CASE AND AS TO BRIEFS—Filed March 12, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 8410

CHAS. C. STEWARD MACHINE COMPANY, a Corporation, Appellant,

versus

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue for the District of Alabama, Appellee

Appeal from the District Court of the United States for the Southern District of Alabama

Stipulation

In the above entitled case, by leave of Court first had and obtained, it is stipulated as follows:

1. Said case and appeal shall be and is submitted this day without argument.

2. Appellant by reference files and submits as its brief herein: (a) The briefs heretofore filed by plaintiffs in case No. 8321 in this court, in which Beeland Wholesale Company et al. were plaintiffs and Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, was defendant; (b) the briefs heretofore filed by plaintiffs in case No. 8323 in this court, in which Alpha Portland Cement Company, a corporation, et al., were plaintiffs, and Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, et al., were defendants.

3. Appellee files and submits as his brief herein, the briefs filed by the Commissioner of Internal Revenue in the case of George P. Davis, plaintiff, against Boston and Maine Railroad Company, defendant, in the District Court

of the United States for the District of Massachusetts, and such other memoranda of authorities as is desired.

(Signed) Borden Burr, (Signed) Walter Bouldin, Attorneys for Appellant. (Signed) J. T. Jackson, Attorneys for Appellee.

[fol. 28] Submission of Case

Extract from the Minutes of March 12th, 1937

No. 8410

Chas. C. Steward Machine Company, a Corporation,

versus

Harwell G. Davis, Individually and as Collector of Internal Revenue, for the District of Alabama

On this day, pursuant to the joint stipulation of counsel, the above entitled and numbered cause was taken under submission by the Court.

[fol. 29] Opinion of the Court—Filed March 20, 1937

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 8410

Chas. C. Steward Machine Company, a Corporation, Appellant,

versus

Harwell G. Davis, Individually and as Collector of Internal Revenue for the District of Alabama, Appellee

Appeal from the District Court of the United States for the Northern District of Alabama

(March 20, 1937)

Before Foster, Sibley and Holmes, Circuit Judges

Sibley, Circuit Judge:

The Charles C. Steward Machine Company sued the Collector of Internal Revenue to recover a tax of $46.14 col-

lected from it as the employer of more than eight persons during the year 1936, by virtue of Title IX of the Social Security Act, 49 Stats. 639. The tax is alleged to have been wrongfully and illegally assessed and collected because the Social Security Act is unconstitutional and void for reasons in brief as follows:

1. The Act in purpose and effect coerces the enactment [fol. 30] by the States of unemployment compensation laws.

2. It violates the Ninth and Tenth Amendments of the Constitution by setting up a federal system of unemployment compensation by controlling the administration of the State statutes and the moneys raised under them, thus intruding on the constitutional power and jurisdiction of the States.

3. By the system so created the property of the employers is taken without just compensation for the benefit of an arbitrarily defined class.

4. The taxes imposed under the Act are not for revenue to support the Government for constitutional purposes, but for the purpose of providing funds to support State administrations in matters beyond the province of the Congress to control.

5. The Act violates Article 1, Section 1 of the Constitution by investing legislative authority in the Social Security Board in its stated activities. Refusal of an application for refund based on the same grounds was alleged. The District Court sustained a general demurrer and dismissed the suit.

The question whether the tax is in conflict with the Constitution is thus presented, uncomplicated by the question of a remedy in equity on which the decision in Beeland Wholesale Co. vs. Davis, Collector, — Fed. (2d) —, mainly went. Mindful of the established rule that a court will enquire into the constitutionality of a statute only when and to the extent that the case before it requires entry upon that duty, we are of opinion that we need not consider the Social Security Act as a whole. The Act deals with a number of subject matters, somewhat related but separately regulated. It contains ten broad divisions or titles which might have been made separate Acts. At the end is Section

1103: "If any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected [fol. 31] thereby." The tax here disputed is laid under Title IX headed: "Tax on Employers of Eight or More." Its provisions are workably complete within themselves, and we need critically to examine them only. The first section in the Title enacts that "On and after January 1st, 1936, every employer (defined in Section 907) shall pay for each calendar year an excise tax with respect to having individuals in his employ, equal to the following percentages of the total wages, etc." Section 905 provides that the taxes imposed shall be collected through usual channels and by usual procedure; and "shall be paid into the Treasury of the United States as internal revenue collections." They enter the Treasury as free funds set apart to no special use and subject to be applied to any congressional appropriation. One of the purposes of the Social Security Act, as stated in its caption is "to raise revenue." It originated in the House of Representatives as a revenue measure should. The Constitution, Art. 1, § 8, names as the first power of Congress "To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States.' The employment of another is such a transaction as may be the basis of an excise tax. The power of Congress in imposing excise taxes has been said to be subject only to the limitation that they be for the public welfare and be uniform throughout the United States. Flint vs. Stone-Tracy Co., 220 U. S. 110. A court should have strong reasons to conclude either that this is not a true excise tax to raise revenue, or that Congress did not intend it to be collected if some appropriation or other provision elsewhere in the Act should fail. The appropriations are not of the proceeds of this tax or of any particular fund, but are general appropriations from the Treasury. No appropriation corresponds in amount with or is offset by this tax so as to justify a court in regarding the two as vitally joined in spite of the separability section of the Act.

[fol. 32] There is, however, in the provisions of Title IX touching credits against the tax matter which ties these credits to Title VIII creating the Social Security Board,

and to Title III making grants to assist the States in the administration of their unemployment relief laws. Section 902 allows a taxpayer to take credit up to ninety per cent of his tax for contributions which he has made to an unemployment fund under the laws of his State if those laws have been certified by the Social Security Board as conforming to certain standards specified in Section 903.* If the Social Security Board and its function be unconstitutional, as is earnestly argued and as earnestly denied, the immediate effect would seem to be to render the credit impossible but to leave the full tax to be collected from everyone. Notwithstanding the separability section of the Act it might be a serious question whether or not Congress would have enacted the tax without the credit provisions. It does not appear whether or not the present plaintiff obtained credit by complying with the Alabama Unemployment Insurance Act, which we judicially know has been passed and certified by the Social Security Board. The plaintiff does not complain of having been denied a credit. It may not be in position to attack the provisions for a credit of which it has taken advantage. But we prefer not to be technical, and to consider the tax in connection with the credit provisions which link it with unemployment relief.

For many years and in numerous instances Congress has recognized with complete public acquiescence that calamities such as floods, droughts, earthquakes and pestilences which though local exceed the resources of local government to meet, are matters affecting the general welfare of the United States, touching which its power to tax and the correlative power to spend may be exercised. The recent [fol. 33] countrywide distress due largely to industrial unemployment has caused federal expenditure of billions, largely borrowed. Still it remains true that the relief of such conditions is primarily the duty and burden of the several States. These two interacting responsibilities we think are the key to the legislation under scrutiny. To refill the federal treasury and also to encourage the States to assume for the future their proper burden this tax with its credit scheme has been devised. There is in it no undue coercion or compulsion on the States. If they do not enact

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* We do not consider the credits under Sections 909 and 910 since they are not yet operative.

laws to meet the future need the federal tax is to be collected in full to reimburse the federal treasury and to provide means for it to aid if necessary in the future. If the States arrange to carry their burden in the future by collecting funds for the purpose, the Congress, being relieved to that extent within those States, permits to be credited the contributions made by the taxpayers there, both in order to relieve them of a double load and as an acknowledgment of the potential benefit to the federal treasury produced by their local contributions.

In Articles III and IX taken together Congress recognizes that the subject of unemployment relief by insurance or otherwise is primarily a matter for the States, but that by reason of recent experience the federal treasury is also involved, and that its reasonable protection is part of the general welfare in a constitutional sense. Grants to aid State agencies whose operations will tend to protect the federal treasury are thus justified. Such are grants to State educational institutions which will teach the military art and thus serve a federal need if Congress should have to raise an army. So the grants to States to improve their public roads assist also the federal function of establishing postroads, and the roads may serve military purposes in time of war. The policy of such grants and the fixing of [fol. 34] their conditions and amount is for legislative, not curial, judgment. The tax here in issue is calculated to raise more money than is appropriated to aid State administrations even if all the States establish them, and the net result of it will be to put money into the Treasury as well as to aid federally protective State activities.

The conditions of the credit, as fixed by Title IX, Section 903 and to be judged of by the Board, are not without sound, discernible reasons. If the federal treasury is to be effectively protected by the State contributions, these contributions must be safely kept and must be of such incidence and such distribution as will fairly insure the results sought. To have the money put into the hands of the Secretary of the Treasury for investment in United States securities tends to safety, and may check unfavorable tendencies in the financial and banking world when unemployment comes to be relieved by the liquidation of the investments. It also affords another market for federal loans. Other details we do not find to be arbitrary. The Social Security Board acts

as a sort of commission to administer and apply the Act so as to secure its outlined purposes and prevent misuse of the generous credit.

The credit is not a penalty or coercion on the taxpayer. If his State has no unemployment relief law his not getting the credit is not a punishment for any act of his. Not having contributed through his State to meet the unemployment peril he merely contributes fully through the federal government. As an employer he contributes about the same whether his State does or does not have an unemployment [fol. 35] relief law. This equalization of the burden also tends to enable the States to pass such laws without exposing their citizen employers to a difficult business competition with employers in States which have none. There is thus a relief to the States from an embarrassment in their legislation on these lines, which frees rather than coerces them.

Whether in practical effect the credit device which depends on State differences deprives the tax of the territorial uniformity throughout the United States which the Constitution requires in an excise tax is a question not pleaded or argued here, but see Florida vs. Mellon, 273 U. S. 12. Nor is the question of requiring tax of employers of eight but not of employers of seven. This distinction was held to be without discoverable reason with relation to the unemployment insurance set up by the Alabama State Unemployment Insurance Law, and to deny equal protection both to employers and employes; Gulf States Paper Corporation vs. Carmichael, Attorney General, recently decided by a three-judge court in the Middle District of Alabama. An appeal is pending, and the conclusion was disapproved by the Supreme Court of Massachusetts in Howes Bros. Co. vs. Unemployment Commission, — Mass. —. But the statute before us is not a State law resting on the police power which under the Fourteenth Amendment must afford equal protection. It is a tax law of the United States to which that requirement does not apply. Congress had the right to look to mere bigness in laying the tax, and to exempt smaller payrolls as not worth pursuing. LaBelle Iron Works vs. United States, 256 U. S. 377; Bromley vs. McCaughn, 280 U. S. 124; Flint vs. Stone-Tracy Co., 220 U. S. 108.

Since we hold the exaction to be a tax, there is no room for the contention that private property has been taken for public use without just compensation. The general benefits of government are the compensation for all takings [fol. 36] through taxation. We think the tax and its credit are to be upheld as against the attack here made. The judgment is

Affirmed.

[fol. 37] JUDGMENT

Extract from the Minutes of March 20, 1937

No. 8410

CHAS. C. STEWARD MACHINE COMPANY, a Corporation,

versus

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue for the District of Alabama

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fol. 38] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 26 to 37 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, num-

bered 8410, wherein Chas. C. Steward Machine Company, a corporation, is appellant, and Harwell G. Davis, Individually and as Collector of Internal Revenue, for the District of Alabama, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 25 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of March, A. D. 1937.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 39] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 29, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for hearing immediately following Nos. 724 and 797.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,377. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 837. Chas. C. Steward Machine Company, petitioner, vs. Harwell G. Davis, Individually and as Collector of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed March 26, 1937. Term No. 837, O. T., 1936.